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C O N F I D E N T I A L SECTION 01 OF 03 PORT AU PRINCE 000795

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TAGS: PGOV, PHUM, PREL, HA
SUBJECT: SUPREME COURT REJECTS TRANSFER OF NEPTUNE/PRIVERT
CASES TO PORT-AU-PRINCE

REF: PAP 666

Classified By: AMBASSADOR JAMES B. FOLEY, REASONS 1.5(B) AND (D).

1. (C) Summary: The Haitian Supreme Court rejected March 18 a motion to transfer from St. Marc to Port-au-Prince the linked cases of former Prime Minister Yvon Neptune and co-defendant former Interior Minister Jocelerme Privert. Both are charged with involvement in the February 2004 massacre in Saint-Marc of Aristide opponents and civilians. The decision short circuited the IGOH's efforts to find a quick resolution to Neptune's case, which poses grave dangers for the IGOH in the event Neptune should die (which would result in international condemnation) or in the event Neptune is freed without a judicial reckoning. Internal criticism of PM Latortue's handling of the case and of the international community's perceived meddling is narrowing the IGOH's options. IGOH leaders told Ambassador they will undertake another effort to effect the change of venue and are prepared to take huge political risks to make it happen. Should this effort fail we will be looking at extra-judicial solutions whose political cost to the fragile IGOH will be even higher.
End Summary.

The IGOH Gameplan...

2. (C) The IGOH's gameplan last week was to get Neptune's case transferred from St. Marc to the capital and thereby arrange for him a swift hearing from a Port-au-Prince judge. Since Neptune's case is linked to Privert's, approval of Privert's pending change-of-venue request would have

accomplished this. The alternative was to persuade the St. Marc investigating judge to relinquish the case and the St. Marc state prosecutor (Commissaire de Gouvernement) to request a change-of-venue on that basis. PM Latortue told us that his government had identified a judge in Port-au-Prince who would be willing to interview Neptune and evaluate the charges against him. Latortue expressed concern, however, that the judge and prosecutor might be reluctant to act given the possibility of a violent reaction in St. Marc.

3. (C) On March 16 PM Latortue informed Ambassador that Commissaire Jules had traveled to the capital and been persuaded to accept the plan and to transmit the appropriate communications to the Supreme Court. Latortue explained to Ambassador that he had "moved heaven and earth" in his home base in the Artibonite to persuade Commissaire Jules to write the necessary letter, and said that President Alexandre was expected to discreetly weigh in with his former colleagues on the Supreme Court. By Thursday March 17, the Supreme Court had before it the letter from Jules stating his opinion on the Privert change-of-venue request. In a meeting that day with embassy human rights officer, Justice Minister Gousse said that he had personally called the vice-president of the Supreme Court, Georges Henry, to urge the court to make a decision before the judicial Easter recess.

...goes awry

4. (C) In the end, neither the Commissaire nor the Supreme Court played ball. President Alexandre's Chief of Staff Michel Brunache attributed the judges' decision to fear of the likely violent reaction in the event they had decided to grant the change of venue request. (Note: This is underscored by the fact that the members of the court had apparently tried to flee the country on an early Easter break in order to avoid having to render a judgment in the case. Latortue slapped a travel ban on the members and forced them to act on the case before departing on vacation. End Note.) In the event, it turned out that the Commissaire actually recommended against Privert's change of venue request and the Supreme Court readily endorsed this recommendation, thus dealing a sharp blow to the President and the Prime Minister -- and to our hopes of achieving a legal resolution to the Neptune case that shields the IGOH from a political backlash it can ill afford.

5. (C) It is not clear where things go from here. MINUSTAH officials are looking urgently for a legal and defensible solution that would ensure a modicum of respect for the judicial process. The investigating judge could still request a recusal which, if the state prosecutor endorsed it, could be presented to the Supreme Court, but that seems unlikely given the public pressure in St. Marc. Latortue has floated the idea of taking Neptune to St. Marc under heavy guard for a hearing; any public disorder would then be used to justify another request to the Supreme Court to transfer the case on security grounds. (Justice Minister Gousse in fact indicated that this was the government's intent in a March 22 radio interview.) Neptune said last week that,

regardless of the court's decision, he would neither see a judge nor cooperate in the judicial process (although he could be compelled to at least appear in court). SRS Valdes barely persuaded Neptune to temporarily halt his hunger strike prior to the Supreme Court's decision, and Neptune has said that he is prepared to resume the strike unto death if the IGOH does not capitulate and simply free him.

All is not lost?

6. (C) Ambassador met with the President, Prime Minister, and Brunache late in the afternoon of March 21 to discuss other possibilities for resolving Neptune's case. Latortue indicated acceptance of the Ambassador's argument that it was too dangerous to take Neptune to a hearing in Saint-Marc. Instead, the President and the PM agreed to make another push to persuade the Commissaire in Saint-Marc to petition the Supreme Court for a change in venue, on the basis of security concerns (last week's Privert petition was based on the potential for bias among a jury in St. Marc). They plan to fire him and name a new Commissaire in the likely event he refuses to comply. They also eagerly embraced a UN proposal, conveyed by the Ambassador, to put Neptune in a house that would be designated as an Annex to the National Penitentiary once he is released from the Argentine military hospital.

7. (C) The Ambassador, stressing the utter unacceptability of Neptune dying in IGOH custody, explored other options in the event that legal remedies are exhausted. He suggested for example that the IGOH might consider declaring a pause in the legal process on the grounds that the situation in Haiti was too fragile for the IGOH to handle a case of this magnitude; it could be left for the elected government in 2006. The President and Prime Minister did not rule this out, noting that it might be sustainable if the house/annex idea comes to fruition. Second, the Ambassador conveyed a suggestion from Deputy SRS Medili that the IGOH consider allowing an international or "mixed" tribunal to deal with Neptune's case, as well as with a number of other outstanding controversial cases. After initial hesitation, the IGOH leaders went farther, proposing that the Security Council itself establish an international tribunal for Haiti. They felt that this approach would be more politically palatable and represent the only possibility for Haiti to escape from the decades-old cycle of impunity. Latortue suggested that an international tribunal could tackle the toughest outstanding cases, including the murders of Jean Dominique and Brignol Lindor.

Latest Developments

8. DSRSG Medili was pleased with the Ambassador's readout of the meeting, and set the wheels in motion to effect an eventual transfer of Neptune to a house in Port-au-Prince. In a subsequent conversation after consulting with SRS Valdes (who is in the U.S.), Medili threw cold water on the idea of the Security Council formally establishing an international tribunal, saying the view in New York was that it would be too costly and time-consuming. Instead, MINUSTAH

would seek to pay for international jurists or legal experts to assist IGOH authorities in handling Neptune and other difficult cases. (OAS Special Rep Modeste told Ambassador March 22 that the OAS would be willing to assist in such an effort as well.)

9. Brunache told the Ambassador at a palace dinner March 22 that he had indentified a succcessor Commmissaire for Saint-Marc. Now the PM would have to decide whether to make another go at the current Commissaire or simply fire him without further ado. Brunache expected a negative political outcry over this (and Neptune's transfer to a residential "prison" annex) that would rock the government. Whether the IGOH could survive the reaction he thought would depend on the context -- notably whether MINUSTAH was taking military-type action against the pro-Aristide criminal gangs (MINUSTAH's recent action against the renegade ex-FADH was largely playing against the IGOH, according to Brunache). Ambassador conveyed (and echoed) this perspective to DSRSG Medili March 23. Medili responded that MINUSTAH was aware of the perception and was "planning steps to change that perception." Medili and Guindo were expecting to meet with Latortue on the Neptune issue later March 23rd.

Comment

10. (C) The Supreme Court decision was a spectacular blow against our efforts to promote a resolution of the Neptune case in conformity with Haitian constitutional and legal procedures. The IGOH is faced with an almost impossible dilemma -- the choice of international opprobrium if Neptune dies in prison, or a heavy-handed, political intervention that may produce a collapse of what little domestic support it enjoys. The incendiary criticism of Neptune's previous transfer to the Argentine military hospital leveled by the G-184, most political parties and the human rights community has reduced the IGOH's maneuvering room to a minimum. The IGOH needs cover for its next move. We are endeavoring to work with business leaders, political parties and human rights groups to create space for an eventual solution. Whether Minister of Justice Gousse (whose wife's bodyguard was assassinated yesterday) is willing to be a part of that solution or an obstacle to it remains to be seen. The good news is that the President and Prime Minsiter seem united and determined to assume the considerable political risks that any resolution will entail.

FOLEY

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